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REPORT ON OTHER MEETINGS AND ACTIVITIES

Contribution submitted by the Raoul Wallenberg Institute of
Human Rights and Humanitarian Law

1. The attention of the Preparatory Committee is drawn to the attached report of the eleventh Nordic Refugee Seminar organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law from 15 - 17 November 1992. The purpose of the seminar was to seek solutions to the current refugee situation in the Nordic countries.

2. The seminar considered the more than 3 million people who have become displaced persons due to the events in Central and Eastern Europe, and especially in the former Yugoslavia. The laws dealing with aliens in the Nordic countries were not designed for situations of mass influxes of persons. Legal protection for displaced persons was discussed in recognition of the fact that the 1951 Convention on the Status of Refugees does not cover the situation of mass influxes of persons who need temporary asylum. Revision of immigration policies in Europe is under discussion in many countries. One conclusion of the seminar was that the promotion of human rights is essential to avoid the displacement of populations and massive refugee flows.

Report of the Eleventh Nordic Refugee Seminar

arranged by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, University of Lund, 15 to 17 November 1992.

1. Opening of the Seminar

The chairman of the Raoul Wallenberg Institute, professor Carl-Gustaf Andrén, opened the Seminar.

An inaugural address from the Swedish Minister of Immigration, Ms. Birgit Friggebo, was read by Mr. Erik Lempert. The Minister stressed the enormous political change which has occurred in Eastern and Central Europe, and in particular the tragic events in former Yugoslavia which caused more than three million people to flee from violence and war. This has given rise to displaced persons who do not fall within the scope of the 1951 Refugee Convention. Accordingly, it was necessary to discuss and develop the legal apparatus to meet the present need. She stressed that if on humanitarian grounds a state wanted to give protection to those in need of protection, temporary asylum could be an alternative.

The most important contribution from researchers and politicians was to define the different categories of people that have to be protected so that they can be described in political and legal terms. The questions put to the Seminar should therefore be whether the legal rules or practices of today are sufficient and clear enough compared with the demands, and how far do the obligations go within the 1951 Refugee Convention.

The Minister stressed that the refugee politic was based on national trust and the willingness of the citizens to help people that need assistance and protection. The real challenge was to make the policy clear and understandable.

In the general debate that followed, it was pointed out that presently two proposals for complementary legislation are being prepared in Sweden: one on temporary asylum for persons fleeing from former Yugoslavia; and one on temporary asylum in cases of a large-scale influx of refugees and displaced persons. With respect to international co-operation, a group of European states have been meeting since 1991 to discuss consequences on the migration policy after the breakdown of Soviet Union and the preparation of a European Convention on mass influx situations. Refugees should be entitled to temporary asylum in countries close to the crisis and a mechanism of burden-sharing should

complement the system. The solution to the refugee problem should be through repatriation, but it has to be decided when repatriation should take place. In this context the UNHCR should have a role to play.

The representative of the UNHCR stressed the importance of cooperation for the protection of all refugees. Such cooperation should involve governments, intergovernmental organisations and non-governmental organisations, academic institutions and the media. He stressed that the UNHCR has developed a joint strategy with human rights bodies like the UN Centre for Human Rights and, on a country-to-country basis, human rights missions established by the Secretary-General. Links with academic institutions are important for UNHCR in research terms but also for exchange of ideas and promotion of refugee law training. Accordingly, the Office will encourage greater collaboration and exchange with academic institutions. He also stressed the need for strengthening the capacity of the Office for research, notably on protection.

2. Definition of the Term "Displaced Persons"

Introducing the theme "Definition of the term 'Displaced Persons'" Mr. Per Erik Nilsson stated that the concept may pertain to any person who has left his habitual residence for reasons beyond his control or as a result of events or situations that constitute a danger to him. Semantically, this definition includes virtually all kinds of uprooted people in the widest meaning of the word. The term "refugee" as a legal concept is used in a more narrow sense. The term "displaced persons" may include refugees but also those who are uprooted because of man-made disasters.

The 1951 Refugee Convention/1967 Refugee Protocol only mentions one category of person qualified for refugee status. The Swedish Aliens Act, on the other hand, prescribes for three categories of persons entitled to asylum. These are (1) Convention refugees, i.e. persons who fulfil criteria for Convention refugee status as interpreted in Sweden; (2) de facto refugees, i.e. persons who are not accepted as Convention refugees, but who cannot return to their country of origin due to the political conditions there, and who can invoke significant reasons not to return; and (3) deserters and draft evaders who fear to be sent to a theatre of war. Asylum is always granted on an individual basis.

Another category not entitled to asylum, are those who are granted a residence permit for humanitarian reasons. Within this category, it is possible to find persons who have

escaped from a war or a war-like situation and it is such persons who mostly are referred to as displaced persons. Mr. Nilsson pointed out that the displaced persons in other European countries frequently are referred to as de facto refugees. Accordingly, that term has a different meaning in Sweden vis-à-vis other countries.

With respect to asylum seekers from former Yugoslavia who have recently entered Sweden, no decision on granting refugee status or a residence permit has been taken. They are, however, not returned to their country of origin. It was against this background that the Swedish Ministry had taken the initiative for complementary legislation on temporary asylum for persons fleeing from former Yugoslavia. The draft has been prepared in consultation with the UNHCR.

In the debate that followed, it was stressed that basically close links exist between human rights law, humanitarian law and refugee law. Fear of violations of individual human rights, in particular civil and political rights, may lead to recognition as refugees under the 1951 Refugee Convention. It was stressed that civil and political rights clearly are individual rights and that refugee status under the 1951 Refugee Convention is the corresponding individual right in cases of fear of violation of such rights.

Violations of principles relating to the conduct of hostilities (law of warfare) could lead to such refugee situations as are described in the 1969 OAU Refugee Convention, i.e. refugees or displaced persons because of armed conflicts, internal disorder, etc. What kind of conflict is at stake - an international armed conflict, a non-international armed conflict or internal disorder - is irrelevant in this context. Atrocities against the civilian population as described in Art. 51 of Additional Protocol I to the 1949 Geneva Conventions, may force people to flee. Protection of the civilian population is a collective right and decisions on temporary asylum/status as displaced persons are taken on a collective basis. It is an erroneous presumption that the dividing line between the two categories of refugees relates to numbers. Violations of individual human rights can lead to a mass exodus of refugees, as in the case of Bosnia-Herzegovina. The difference between the two categories relates to the causes for a refugee outflow.

The Swedish immigration procedure is based on individual processing and is not adapted for group determinations and the granting of temporary asylum to persons fleeing from war or warlike situations. The new Swedish draft

legislation relating to temporary asylum is based on a group determination process.

The refugee situation in Norway is similar to that in Sweden. The Aliens Law is not designed for situations of mass influxes. Nevertheless, asylum is granted on humanitarian grounds and the asylum-seekers are being granted residence permits. Within the Ministry of Justice, two committees are preparing legislation on temporary asylum and suggesting what kind of protection such refugees should be entitled to. The work is carried out in cooperation with Norwegian NGOs.

The necessity of additional legislation has also been noted in Denmark, and a proposal for a law on temporary asylum is pending before the Danish Parliament since November 1992. However, the draft law only concerns asylum-seekers from Yugoslavia, but it is worded so that it can be used more generally. It is based on the idea of temporary asylum and not of integration.

The length of the period of temporary asylum was discussed and it was questioned if such a period could be prolonged. In the Swedish draft legislation, such a period is not to exceed nine months, with a possibility for the Swedish Parliament to prolong the temporary stay for periods up to six months. If the period of temporary stay elapses, the foreigner must leave the country. In the Danish draft legislation, the period for protection is six months, with a possibility of prolongation up to a maximum of two years. It was stressed, however, that some conflicts can give rise to temporary asylum for a longer period. The Afghan refugees in Iran and in Pakistan are examples of situations where temporary asylum had to be provided for a considerable period.

It was underscored that occasionally, a person entitled to temporary asylum could simultaneously fulfil criteria for Convention refugee status. Such cases raise the problem of determining at which time an application for asylum/Convention refugee status should be made, immediately upon arrival or when the right to temporary asylum has expired. It was noted that the Swedish draft legislation suggested a solution in line with the latter alternative. The proposal was, however, contested with reference to provisions in the 1951 Refugee Convention and the fact that a solution for Convention refugees is called for as soon as possible. A comparison can be drawn with the refugee legislation in some African countries where the problem has existed for a number of years. Refugees, i.e. those who have been granted temporary asylum, are at any time entitled to apply for Convention refugee status in accordance with established procedures.

3. Legal Protection of Displaced Persons

The theme was introduced by Mr. Erik Lempert who pointed out that one must realise that the 1951 Refugee Convention does not cover all cases where protection is needed, and certainly not in cases of mass influx. When the Convention was written, this was not the intention either. Is the 1951 Convention applicable for individual persons within a situation of mass influx? This is more difficult to determine. In these deliberations, one must not forget that there are exceptions to the principle of non-refoulement if a State faces a situation threatening ordre public or national security. Are there other rules outside the Convention that can govern State behaviour? The International Court of Justice declared in the Corfu Channel Case (page 22) that basic human rights and principles of humanitarian law consist of rules to be followed by States, even if they are not treaty-bound.

In the EXCOM conclusions (No 22), there is a rule which governs appropriate action in cases of mass movements or mass influxes of refugees. Here, the definition is quite close to the one in the OAU Convention. One can also, by analogy, use the 1949 Geneva Convention where there is a rule about neutral asylum in war. In the European Convention for the Protection of Human Rights and the Fundamental Freedoms, article 3 is not to be forgotten. The Cartagena Declaration should also be mentioned here.

A country that is flooded with refugees closes its borders. The UNHCR has pointed out the importance of "access". The system for assisting refugees is today quite rudimentary and it is in need of overhaul. The same goes for the different organisations or systems built to assist refugees.

The problems states are facing today are whether there can be an organisation of some kind that can deal with the problems and solutions in a proper way. Bosnians in Croatia or Bosnians in Serbia should not be seen as asylum-seekers or refugees in a mass influx, but as persons in need of temporary protection.

In the following discussion the view was expressed that the 1951 Refugee Convention could be used also in mass influx situations. Reference was made to the Final Act to the Convention, Chapter IV, Recommendation E, and the fact that the Convention was adopted shortly after World War II in a situation of mass movements of refugees.

Other speakers contested the applications of the 1951 Refugee Convention/1967 Refugee Protocol in all cases of mass influxes, although it was stressed that the ethnic

cleansing in former Yugoslavia meant individual persecution. Accordingly, the great bulk of refugees from that area fulfilled criteria for Convention Refugee status.

It was agreed that should temporary asylum be granted in situations of mass influxes, it was imperative that legal principles be adopted, aiming at clear criteria for such protection as well as an effective mechanism for the procedure to be followed. The existing systems in the Nordic states were too detailed and complicated and could not be used in mass influx situations. The fact that "ordinary" migration was virtually impossible contributed to the problem.

Difficulties could arise if applicants fulfilled the criteria for both Convention Refugee status (human rights refugees) and temporary asylum (humanitarian law refugees). Some speakers stressed that in such a situation the applicant must be free to choose the procedure that is more favourable to him.

It was generally agreed that the principle of non-refoulement was applicable in all situations.

4. Legal Protection and Assistance to Internally Displaced Persons

The theme was introduced by prof. Göran Melander who stressed that the number of internally displaced persons, i.e. uprooted who have not crossed an international border, according to some sources, by far exceeds the number of refugees. With respect to assistance to the internally displaced, treaty law is little developed. Should they be victims of an international armed conflict, the International Committee of the Red Cross and other humanitarian organisations have certain possibilities to assist by virtue of the 1949 Geneva Conventions and the 1977 Additional Protocol I. Most internally displaced persons have, however, escaped in the course of a non-international armed conflict or in a situation of civil strife. Under such circumstances, the international community is not entitled to assist persons in distress without the consent of the state in question.

The basic problem with respect to internally displaced persons is to overcome the objection by the government that measures undertaken constitute an intervention in matters within the domestic jurisdiction of that state. It is true that various UN organs may declare that a particular situation is not essentially within the state's jurisdiction, whereby assistance may be achievable. A better

alternative is, however, that the UN Security Council, acting under Chapter VII of the UN Charter, authorises that humanitarian assistance be provided.

Protection of internally displaced persons lies close to guaranteeing the respect for human rights and the proper application of humanitarian law. As regards human rights law, the "traditional" methods can and are being used, in particular various forms of international condemnation of a state's violation of human rights. Similar methods can be used with respect to humanitarian law. The NGO community has an important role to play and can be strengthened. It is against the rules of the game for the civilian population to be harassed during armed conflicts, and NGOs should give as much publicity as possible, to atrocities undertaken by all parties to a conflict. NGOs have also an important role to play to assist the internally displaced persons. The lack of NGOs for these tasks contributes to the suffering of persons in need.

Assistance to internally displaced persons has to be co-ordinated. The most logical solution would be to establish a new organisation for the coordination of assistance. However, should the competence to assist be dependent upon ad hoc decisions by the Security Council, it may simultaneously authorise an existing organ to coordinate the international assistance. The Security Council may also establish ad hoc organs like UNBRO.

In the debate that followed, the role of the United Nations was discussed. It was stressed that so-called humanitarian intervention was only acceptable in cases authorised by the UN Security Council. Only after a legally binding decision by the Council could it be possible to force a state to accept assistance to people in distress from humanitarian organisations. Accordingly, a more active Security Council was considered necessary.

The representative of the UNHCR reminded participants of the so-called Comprehensive Plan of Action applicable in South-East Asia. According to the CPA, the Office of the UNHCR was authorised to assist asylum seekers whose application for asylum had been rejected and to assist them after their repatriation to the country of origin. He also spoke of the UN peacekeeping operation in Cambodia and former Yugoslavia, two conflicts where the UNHCR has an important role to play. He stressed that the UNHCR could easily expand its activities to assist internally displaced persons and that the UNHCR was prepared to do so.

The proposal was contested by a participant who argued that an involvement by UNHCR to assist internally displaced persons could weaken the possibilities for the

Office to protect refugees who had crossed an international border and who clearly were under the mandate of the UNHCR. There was also a risk that the UNHCR would become another UN development agency.

It was deemed necessary to establish a mechanism to make it possible for humanitarian organisations to assist internally displaced persons. The possibility to make use of the ICRC was underscored, as well as the possibility to establish ad hoc organisations like the UNBRO.

5. Procedures for the Protection of and Assistance to "Displaced Persons"

The theme was introduced by Ms. Berit Fossheim, Ministry of Justice, Norway. She stressed that there are millions of people who are displaced and are in need of protection and assistance. In some cases various NGOs are present, but mostly there are no organisations responsible for the coordination of assistance.

Procedures for the protection and assistance to displaced persons must be elaborated. Strategies for emergency assistance, development assistance and assistance to refugees and immigrants have, however, to be revised in order to achieve a better coordination between international organisations, non-governmental organisations and individual states.

The international organisations must determine the role of different non-governmental organisations. The cooperation between states must lead to a greater acceptance of the principle of burden-sharing. In order to avoid mass influxes of refugees, cooperation is needed for preventing the escalation of a conflict. She stressed that preventive action could only be successful if countries cooperated. The Nordic States have already initiated a number of projects and these activities should be strengthened.

She stressed that the existing apparatus may have to be revised in order to accommodate other priorities. At the national level, the existing machinery was inflexible and short-term. New priorities could lead to another proportion of assistance in the Nordic States or assistance in other countries of asylum.

The discussion took place in Working Groups. Working Group I discussed international cooperation. Exchange of information on various questions relating to mass influx situations was essential. Such an exchange concerned budgetary planning, rules and provisions to be applied and the

operative work, if possible states should draw up plans for mass influxes of refugees.

The cooperation of NGOs should be sought in various phases, depending on their respective mandate. Some NGOs deal with disaster relief, while others are engaged in long-term projects. It was essential to coordinate assistance in accordance with their interests.

Working Group II discussed temporary asylum and temporary protection. The procedure for singling out convention refugees in a mass influx situation was penetrated. However, without finding the ideal solution, it was suggested that refugee legislation in countries which have long experience with mass influx situations would be studied.

A difficult question is when and how temporary protection must change to asylum or permanent residence. In this context burden-sharing was underlined, both economic and as resettlement. UNHCR had a vital role in organizing proper procedures and in distributing economic assistance.

Working Group III discussed repatriation of refugees and persons enjoying temporary asylum. With respect to convention refugees the scrupulous observance of the principle of voluntary repatriation was stressed. The discussion focused, however, on those enjoying temporary protection, where the safe return must be guaranteed.

As long as temporary asylum was granted protection and assistance should be provided aiming at their return. Education could be given in their native language.

In order to guarantee "safe return" an exchange of information was important. Economic assistance to returnees was frequently needed. Such assistance could also be focused at rebuilding the home country.

6. The Relation between the 1951 Refugee Convention and a Treaty Concerning Displaced Persons

In introducing the theme the representative of the Office of the UNHCR, Mr. George Gordon-Lennox pointed to the work of the UNHCR Working Group on International Protection, when examining how best the Office could preserve the principles and values fundamental to international protection while forging new responses which are innovative and practical.

Mr. Gordon-Lennox stressed the Office's support for activities in the fields of preventive diplomacy, ear-

ly-warning, peacemaking and peacekeeping, as well as questions directly related to UNHCR's function in the country of origin, i.e. as regards human rights monitoring and promotion, protection of internally displaced persons, the advisability of safety zones and the effects of all these activities on the need to ensure respect for the institution of asylum. The Office should continue to seek specific endorsement from the Secretary-General or the General Assembly where these activities involve a significant commitment of human, financial and material resources.

Reference was made to Conclusion No 22 of the UNHCR Executive Committee, outlining basic standards of humanitarian treatment in the case of a large-scale influx. The conclusion combined the term refugee, as described both in the 1951 Refugee Convention and the 1969 OAU Refugee Convention, and elaborated the minimum standards in a more condensed form.

In seeking a solution to a refugee problem, Mr. Gordon-Lennox pointed out that local integration in the receiving country no longer seems to be a feasible one in many situations. Accordingly, variable approaches are being pursued with greater frequency, in order to implement a more vigorous promotion of voluntary repatriation and develop such concepts as State responsibility, prevention - - - including in-country protection - - - and temporary protection. Regarding the specific issue of temporary protection for the persons of its concern, the Office must insist on minimum standards of protection against discrimination, refoulement and expulsion, as well as guarantees of basic standards of humane treatment and other fundamental human rights, such as the right of family unity.

It was felt that the time was not yet appropriate for UNHCR to promote new, universal instruments outside the 1951 Refugee Convention/1967 Refugee Protocol for the protection of refugees by States. The Office should nevertheless work actively to develop regional protection possibilities and regional solutions for refugees. Adequate resources, international solidarity and burden-sharing would be necessary for these regional solutions to be implemented.

In his statement Mr. Gordon-Lennox also made reference to a statement made by the High Commissioner who believed that a European strategy should contain the following five elements:

- (1) Although the majority of asylum-seekers in Europe could not prove individual persecution (and not fulfil the requirements prescribed for in article 1 of the 1951 Refugee Convention), in many cases their life and liberty would be in danger if they were forced back to

their own countries. The 1951 Refugee Convention, article 33, prohibits their refoulement for those very reasons!

(2) European countries must examine the possible revision of immigration policies. A significant number of those coming to Europe enter as asylum-seekers, as there is no other possibility to migrate to a European country.

(3) Information, in the largest sense of the word, must be an essential element of any strategy to manage population movements.

(4) The problem of migratory pressure can be solved only when adequate resources are invested in the countries from which many migrants originate.

(5) The concerted and purposeful promotion of human rights is essential to avoid the displacement of populations, refugee movements and the breakdown of stability and peace. Such promotional activities concern human rights in general, the protection of the rights of minorities in particular, and fundamental is the establishment and continued development of democratic states.

In the debate that followed, one participant expressed the opinion that a new refugee convention ought to be elaborated, providing for protection of and assistance to such refugees who are victims of armed conflicts or other acts of internal disorder. Such a convention should in many respects deviate from the 1951 Refugee Convention. It should provide for temporary asylum, preferably in a state neighbouring to the country of origin; it should contain a provision on safe return, a concept which is not exactly the same as voluntary repatriation. The principle of non-refoulement should also be prescribed for, as well as the right to family reunification.

The High Commissioner advocated in favour of a European migration policy. The opinion was stated that such a policy would not solve the present problem in Europe. A more essential solution lies in the adoption by Central European States to take their responsibility with respect to all negative cases, i.e. following the Nordic example, the "deport rejected" cases to the respective country of origin. Unless such a policy is undertaken by all European States, a number of non-refugees will apply for asylum in the region.

The elements of information and promotion of human rights were stressed. The forthcoming UN World Conference on Human Rights could serve the purpose of strengthening universal respect for human rights.

7. Closing of the Seminar.

Mr. Melander, Director of the Raoul Wallenberg Institute, thanked the speakers and the participants of the seminar. He noted that there will be further contacts and follow-up on the subject of de facto refugees both nationally, between the Nordic countries, and internationally. He also hoped that the seminar had served as a sufficient basis in the work of finding solutions for the current refugee situation within the Nordic countries.